

Message

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Subject: WB's Litigation TPs for Benita's Frdiay mtg

Jim Havard asked me to send you our DRAFT desk statement to serve as Litigation TPs for Benita regarding EPA's win of the CBD Ocean Acidification Listing Litigation

Rgion 10's 303(d) Listing Decisions in Washington and Oregon were Upheld by the District Court

On February 19, 2015, the U.S. District Court for the Western District of Washington upheld EPA's 2012 decisions that "all existing and readily available data and information" did not warrant listing Oregon's or Washington's coastal and estuarine waters for non-attainment of the respective States' water quality standards due to ocean acidification on their 2010 Clean Water Act section 303(d) Lists, also known as Impaired Waters Lists.

The plaintiff, Center for Biological Diversity, challenged EPA's approval of Washington's Impaired Waters List and EPA's establishment of Oregon's Impaired Waters List because the lists did not identify any coastal waters as impaired by ocean acidification.

The court found that EPA's decisions regarding Washington's and Oregon's Impaired Waters Lists as to ocean acidification were neither implausible nor contrary to the evidence. The court further found that EPA was not arbitrary and capricious in determining that the regulatory requirement to assemble and evaluate all existing readily available water quality data and was met.

CBD has until March 20th to ask the court to alter or amend its ruling or until April 21st to appeal to the 9th Circuit Court of Appeals.

Background

The issue before the Court was not whether ocean acidification may present a potentially significant water quality problem, but rather the reasonableness of EPA's decisions regarding whether existing and readily available data and information (as of 2012) supported conclusions that the coastal and estuarine waters off

Oregon and Washington were impaired due to pollutants associated with or conditions attributable to ocean acidification.

The Court found that EPA reasonably concluded that the information available when the lists were developed was insufficient to support a finding that the coastal and estuarine waters in Washington and Oregon failed to meet the states' existing water quality standards. The court reasoned that EPA's scientific assessment of the applicability of the evidence at hand was not implausible or contrary to the evidence.